SENATE FINANCE & CLAIMS

Exhibit No. 1

Date 3-10-09

Bill No. HB 194

HB 194 Testimony

HOUSE BILL NO. 194
INTRODUCED BY REP. SCOTT MENDENHALL

Senate Finance & Claims Committee

March 10, 2009

A BILL FOR AN ACT ENTITLED: "AN ACT STATUTORILY APPROPRIATING THE COUNTY PAYMENTS FROM THE HARD-ROCK MINING IMPACT TRUST ACCOUNT; AMENDING SECTIONS 17-7-502, 90-6-304, AND 90-6-331, MCA; AND PROVIDING AN EFFECTIVE DATE."

Mr. Chairman and Members of the Committee:

For the record, my name is Dave Cole. I am the Administrator of the Department of Commerce, Community Development Division. I am here in support HB 194. I would like to thank Representative Mendenhall for sponsoring this legislation.

We understand that the Legislature traditionally opposes the use of statutory appropriations. We hope that we can provide information to demonstrate why a statutory appropriation would be a reasonable solution to an on-going problem in this case.

BACKGROUND:

The Hard Rock Mining Impact Board is administratively attached to the Community Development Division and our staff provides support for the board.

The five-member Montana Hard Rock Mining Impact (HRMI) Board was created by the Legislature in 1981. The Governor appoints the board members. The mission of the board and the purpose of Hard Rock Mining Impact Act (HRMI) (90-6-301, MCA) and Property Tax Base Sharing Act (PTBS) (90-1-401, MCA) are to mitigate the impacts on public services and facilities and fiscal impacts for local governments and school districts from new large-scale hard-rock mineral developments in Montana. The Department of Commerce staff also assists with the distribution of metal mines license tax distributions. (See brochure for additional information on the Board and map showing counties with hard rock mines.)

Under the Hard Rock Mining Impact Act, mine developers and the affected local governments prepare and implement impact plans intended to ensure that local government services and facilities are available when and where they are needed because of new mineral developments, without imposing additional costs on existing local taxpayers. When necessary, the Hard Rock Mining

Impact Board mediates between local governments and hard rock mine developers where potentially adverse public fiscal impacts from large-scale development are identified. Mine developers pay new capital and net operating costs through prepaid property taxes with a subsequent tax credit, grants, or facility impact bonds. When necessary, the board formally adjudicates disputes between affected entities.)

1. Section 15-37-117, MCA, provides that 2.5% of the total collection of metalliferous mines license taxes must be allocated to the state special revenue fund to the credit of a hard-rock mining impact trust account.

2. Section 90-6-304, MCA, provides that money is payable into the hard-rock mining impact trust account from payments made by a mining developer in compliance with the written guarantee from the developer to meet the increased costs of public services and facilities as specified in the impact plan provided for in 90-6-307,MCA.

3. Within the Hard Rock Mining Trust Account, there is a reserve of $100,000, which may be drawn upon in the event that the board must adjudicate a dispute between affected entities. (This occurred during a dispute between Lincoln and Sanders counties over mine taxation.)

(a) Money within the hard-rock mining impact trust account may be used:

(i) for the administrative and operating expenses of the hard rock mining impact board, as provided by 90-6-303(4);

(ii) to establish and maintain the $100,000 reserve amount; and

(iii) for distribution to the counties of origin, as provided by 90-6-331 and section 90-6-307.

2. Section 90-6-331, MCA, provides that prior to each October 31, all money segregated by county in the hard-rock mining impact trust account following allocation to the $100,000 hard-rock mining impact trust account established in 90-6-304(2) as of September 30 immediately preceding must be transferred to the county for which the funds have been held.

This provision had a statutory appropriation until 1999 when legislation developed by the Legislative Finance Committee eliminated statutory appropriations from a number of state laws, including 90-6-331. Since then, the lack of a statutory appropriation has frequently created problems for complying with the Legislature's intent that these metal mines license tax funds be returned to the counties where they originated.

After the elimination of the statutory appropriation for these funds, the Department has budgeted for the disbursements of the mine tax revenue House Bill 2. However, due to the volatility of precious metals prices and the resulting increases in metalliferous mines license taxes paid into the Hard Rock Mining Trust Account by mining companies, the amount of funds to be passed through to the counties has fluctuated unpredictably over several years. Revenues have been very difficult to accurately project because of the continually changing market prices for precious metals including copper, gold, platinum, and silver. (See graphs of changing prices for precious metals.)

As a result, it has been very difficult to accurately budget for the amount of funds to be transferred from the Hard Rock Mining Trust Account to the impacted (See attached charts showing Metal Mines License Tax (MMLT) spending authority and the amounts passed through each fiscal year.) For five fiscal years in a row, 2003 through 2007, the amount of metalliferous mines license taxes required to be transferred to the counties of origin exceeded the authorized spending authority provided by the Legislature.

Under the law, the funds for the previous fiscal year must be transmitted to the counties by October 1st each year. As the result of steadily rising minerals prices, the revenue estimates were consistently lower than actual revenues received for five fiscal years in a row. In the past, we accomplished the pass through of metal mines funds by using spending authority from other Commerce programs. This is done by what is called a "program transfer" which transfers budget authority from one program to another. The transfer is justified by a "Budget Change Document (BCD) which is reviewed by the OBPP and the Legislative Fiscal Division. Depending on the amount, it may also be reviewed by the Legislative Finance Committee. That is obviously not a desirable alternative since it can seriously affect the operations of other Commerce programs.

To deal with this, the Department of Commerce requested an increase in spending authority of $300,000 from the 2007 Legislature, which brought our total spending authority to $468,861. However, during FY 2008, metals prices did not rise as high as anticipated:

- Budget Authority for FY 2008 was $468,861; pass through payments of MMLT were $340,595, based on calendar year 2007 tax receipts.

- Budget Authority for FY 2009 was $468,861; pass through payments of MMLT were $402,995, based on calendar year 2008 tax receipts.)

Because metals prices were low during our base budget year, FY 2008, our authorized spending authority was established at only $340,595. If metals prices rise again when the economy regains strength with the Stimulus Bill programs, as some authorities project they will, we could very likely be without adequate spending authority again to transmit the available metal mines tax revenues to the counties. For example, the pass through payments in FY 2009 exceeded our new spending authority for the 2010 – 2011 Biennium by $62,400.

We have provided copies of recent articles, which suggest that copper prices, in particular, are likely to increase because of the Stimulus Bill. If metals prices rise, it will increase the likelihood that we will again exceed our spending authority to pass through the Metal Mines License Tax funds to counties during the next biennium.

For this reason, we believe that House Bill 194 provides the best, long-term solution to the problem caused by the unpredictability of metals prices by restoring the statutory appropriation for the transfer of Metalliferous Mines License Tax monies to the impacted counties where the taxes originated.

Our goal is simply to be able to pass through these monies to the hard rock counties as required by law, without affecting other Commerce programs because we do not have sufficient spending authority. Commerce does not charge any administration fee for this function. All the metal mines license revenues we receive are passed through to the counties.